

Information Pack

Mobilising social justice:

Unlocking the potential for civic action to achieve structural change

A Conference organised by:

/

SS-HIVOS Civil Society Building Knowledge Programme

Chalsty Centre, University of the Witwatersrand

Johannesburg, South Africa

23 and 24 November 2009

Conference Facilitators

Edward Sebastien
Lebohang Pheko

Conference Organiser and Media Liaison

Ghadija Vallie

Contents

1.	Welcome Message	3
2.	Background to the Conference	4
3.	Conference Programme	8
4.	Paper Abstracts / Summaries	10
5.	Map / directions to the venue	21

1. Welcome Message from the Conference Facilitators and Organiser

With peace and warmth, we greet you with humility.

Welcome to one and all, today and every day.

This gathering is a result of your vision, enthusiasm, eagerness and your amazing responses. When you were called upon via telephone, email, fax and responded – bless you. The amazing conversations, friendships – the desire to be involved, all set the tone.

We are gathered here from different parts of the world to share and to listen with respect. We gather for different reasons, but during these two days let us not forget that the purpose is to articulate, to the best of our ability, the pain, the struggles of the poor and dispossessed.

We are not going to try to speak on their behalf, but to listen and share their stories which they have shared with the researchers.

When afforded these opportunities together, we need – and must ensure – that the weave be woven with the intention to learn, to gather and to be on voice. Academics, practitioners, communities, recognize each other's gifts, embrace them, march on!

We wish you the best in your deliberations – now and forever.

Thank You,

Blessings,

Yours, for a united world free from oppression,

Aluta Continua,

Lebohang Pheko
Edward Sebastien
Ghadija Vallie

2. Background to the Conference on *Mobilising Social Justice*

This conference on *Mobilising Social Justice*, organised by the Knowledge Programme (KP) on Civil Society Building (CSB) between Hivos and the ISS, is the culmination of a two year-long process, with an overall objective to engage researchers and practitioners in issues of common concern and relevance to the Programme. This process has identified research topics of special relevance to practitioners, and has critically engaged researchers with the policy and other practical implications of their research.

2.1 Phase One: Determining the Broad Research Questions of the Programme

The Knowledge Programme on CSB has decided to focus on civic initiatives in Latin America and in Southern Africa. Based on several years of research by the ISS academic staff members and Hivos' long-standing work in these regions, the KP team from ISS determined (with Hivos) the following broad research questions, to be explored by the programme:

- 1) How can we understand the dynamics of civil society formation and the role of local actors in this process?
- 2) How do external actors (donors as well as support organisations) contribute to this process?
- 3) How does civil society building as a process contribute to structural changes in the unequal balance of power in society?

On the basis of these three, broad questions, the KP team from ISS undertook consultations with Hivos regional offices, and its partners, both in Latin America and in Southern Africa.

2.2 Phase Two: Finalising the Research Themes in Southern Africa

During the course of July - November 2008, the KP team from ISS met with Hivos local office in Johannesburg and Hivos regional office in Harare, as well as various Hivos partners in South Africa and Zambia, to identify and refine the programme's proposed research themes. The themes therefore arose directly out of the work of Hivos and its partners, and were oriented around *social, economic and political rights in interactions between citizens, government and donors*, with particular attention to 'Civic action for poverty reduction' and 'Civic action for human rights accountability'.

These themes recognised the importance of social, economic and political rights and are to concentrate on the interactions / interplay between citizens, governments and external actors/donors, investigating the dynamics, roles and responsibilities of each in a particular time and situation and investigating the potential of civic actors to contribute to structural change. The research aimed to clarify this interplay in order to inform future policy and strategies.

Meetings at Hivos office in Johannesburg stressed the need for research that went beyond monitoring and documenting the violations of rights and reactive responses, such as litigation, but instead brought out ideas on how rights could become a reality in the lives of ordinary people. The focus of the research was to clarify the relationship between the rights and interests of a community, of individuals and of the state that principally delivered these rights. A further focus of this research was how to create possibilities for claiming rights that also recognised a sense of responsibility for the rights of others.

Major issues that arose were: how to make rights work for people (rights as, for example, included in the much applauded Constitution of SA) and how to bring about societal change, (for example, changing the social climate, so that people also recognise their rights and responsibilities in relation to each other (like refugees, migrants, anti-xenophobia campaigns).

Accordingly, the ISS team met various organisations and individuals advocating social, economic and political rights, through campaigns, research, litigation, and awareness-raising. Most had a national (south Africa) focus, but some had a regional relevance. The team also met and became familiar with various initiatives to improve living conditions at local level. Further, the team met with organisations and individuals who aimed to enhance the interaction between citizens and government at a policy level, in an attempt - on the one hand - to enhance the actions of CSOs in influencing policy and - on the other hand - to make governmental and regional institutions more receptive to civic inputs. Finally, the team concentrated on the role of donors in civil society building. For Hivos in Southern Africa, the following policy questions were felt to be of particular importance, namely:

- What triggered civic action?
- What inhibited civic action?
- What sustained civic action?

2.3 Phase Three: Refining the Themes and Commissioning the Research

Informed by the above-mentioned discussions, four research projects were commissioned in South Africa, and two more commissioned in Zambia and Zimbabwe along the further refined theme of *Civic action for responsive governance: Poverty eradication and human rights accountability*.

The overall objectives of the Knowledge Programme were:

- 1) To foster innovative (academic) research on the theme of civic action for responsive governance in Southern Africa;
- 2) To 'translate' this research and generate useful material, oriented towards strengthening the capacity of civil society organisations working for vulnerable and marginalised groups, and
- 3) To promote the exchange of knowledge to stimulate both a debate and dialogue on the strengthening of civil society within academic sectors and (partner) organisations.

Four research projects were funded in South Africa on:

Mobility and Mobilization: Claiming migrant rights in South Africa: A research project by Ms. Zaheera Jinnah of the Forced Migration Study Programme at the University of Witwatersrand.

The impact of legal mobilisation on the Anti-Privatisation Forum (APF): A research project by Dr. Jackie Dugard of the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand.

The Budget Process and Strategic Civic Interventions: A research project conducted by Mr. F. Jenkins, advisor to the South African Parliament

Policing and Protest: A research project conducted by Dr. Marcelle Dawson of the Centre for Sociological Research at the University of Johannesburg, in collaboration with the Freedom of Expression Institute (FXI)

In addition, two further research projects were explored in Zimbabwe (on the opportunities and challenges for legal civic advocacy) and in Zambia (on the work of the Oasis Forum).

2.4 Phase Four: Consultations with Researchers and Practitioners

In July 2009, the KP Team from ISS and Hivos travelled again to South Africa to meet with Hivos local office in Johannesburg and to consult with the South African researchers about (1) progress on the research projects and (2) desired objectives for the November 2009 Conference. In order to further challenge the KP Team of ISS and Hivos, a number of practitioners and other researchers were invited to take part in a workshop at the Chalsty Centre, Wits University School of Law in Johannesburg.

A number of issues were flagged at the outset of the workshop as key priorities for Hivos and the ISS. These included: (1) taking stock of progress in the research projects and the methods used; (2) recognition of the challenges facing the Knowledge Programme; (3) the value in sharing research; (4) understanding the dynamics and role of civil society; (5) the need to stimulate intellectual capacity; (6) regional dimensions of the issue and (7) the importance of policy.

2.4.1 Regional research

A regional focus was determined to be a high priority for the programme. The Knowledge Programme at this point had been involved in two, broad thematic areas. In Central America, the programme was supporting three studies on social movements and development. In Southern Africa the focus was on civic action for responsive governance, with Zambia and Zimbabwe being the most likely countries to become involved in the short-term. 5-8 studies were eventually planned for the region, focussing on the sub-themes of civic action for poverty eradication and civic action for human rights accountability. It was important to explore how the two regional programmes would stimulate diversity and discussions within civil society in both regions, as well as enhance intellectual capacity.

2.4.2 *Common thread in the Southern African research*

There was a definite thread running through the research in Southern Africa. The challenge was to weave the findings of the four research papers so that one can begin the process of not only demystifying, but putting into ACTION the findings and conclusions of the research. Common and overlapping issues in the research projects were: poverty, the special vulnerabilities of migrants, repression by (and impunity of) the police, including their response to protests and the process for concluding budgets in Parliament.

Other key issues and challenges facing the above included: promoting access to rights, being sensitive to the language used in implementation, discrimination and lack of knowledge of rights.

2.4.3 *Ethical challenges for the researchers*

Participants in the workshop felt it was important to know peoples' pain. For too long, academics and researchers had forgotten that their work was made possible by entering people's lives. As one participant acknowledged, much tension existed between academics and the communities they worked in. In many cases, an informal approach must exist before alliances were built.

2.4.4 *Targeting the law and policy makers*

Participants felt that one could and should be more creative in understanding how law was shaped or defined. The process of policy-making needed to be inclusive, involving academics and other researchers, practitioners, activists, communities and funders. This is provided for in the law in South Africa. However, the practice of law should also be better understood. It was the poor, not policy-makers, who tended to suffer from policy failures to address hunger, health and basic services. These issues should furthermore be understood in terms of their local and global dimensions. It involved (re)training governments, police, civil society, health practitioners, educationalists and others.

There were often major gaps in the law, and respect for the law by government and others. For example, when the right to protest was exercised, the police sometimes responded in an abusive way. Police had been able to turn criticisms of their actions around, feeling vindicated in their tactics because *they have had training* (e.g. human rights training).

It was broadly acknowledged by the workshop participants that change was made collectively, and one needed to understand how to measure these changes. However, change was also inevitable. Life is not stagnant!

Next phase?

This next stage of the process is to discuss the research findings and to critically engage with practitioners again in a process of critical (self) reflection.

3. Conference Programme

Day One

8.00 Coffee and Registration

9.00 Welcome by Jon Campbell (Hivos)

9.15 Elaboration on the Themes of the CSB Programme (ISS)

- Reflections from the Latin American Programme by *Kees Biekart*, ISS
- The Hivos Knowledge Programme and Civil Society Building (CSB) Framework by *Remko Berkhout*, Hivos

9.45 Civic-State Interactions and the Potential for Structural Change

- Paper by *Jeff Handmaker*, ISS (15 min)
- *Peter Alexander*, Centre for Sociological Research, University of Johannesburg (10 min)
 - *Ebrahim Fakir*, Electoral Institute of South Africa (10 min)

10.20 Discussion with Participants

11.00 Coffee Break

11.30 Policing Protest

- Paper by *Marcelle Dawson*, CSR, University of Johannesburg (25 min)
- *Alan Fowler*, Affiliated Professor, ISS (10 min)
 - *David Cote*, Head of the Strategic Litigation Unit, Lawyers for Human Rights (10 min)

12.15 Discussion with Participants

12.45 Lunch

13.30 Short Documentary – Civic Action and Legal Mobilisation

13.45 Civic Action and Legal Mobilisation

- Paper by *Jackie Dugard*, CALS, University of the Witwatersrand (25 min)
- *Angie Palezo*, Rand Water (10 min)
 - *Jonathan Klaaren*, School of Law, University of the Witwatersrand (10 min)

14.30 Discussion with Participants

15.00 Tea / Coffee Break

15.15 Migrant Mobility and Mobilisation

- Paper by *Zaheera Jinnah*, FMSP, University of the Witwatersrand (25 min)
- *Monica Juma*, Africa Institute (10 min)
 - *Jacob van Garderen*, National Director, Lawyers for Human Rights (10 min)

16.00 Discussion with Participants

16.30 Wrapping up

17.00 End of Day One

Day Two

9.00 Welcome Back (Facilitator)

9.15 The Budget Process and Strategic Civic Interventions

Paper by *Frankie Jenkins*, Attorney and Independent Researcher (25 min)

- *Sharukh Alam*, The Patna Collective, India (10 min)

- *Lucy Jamieson*, Children's Institute, University of Cape Town (10 min)

10.00 Discussion with Participants

10.30 Coffee Break

10.45 Some Regional Reflections on the Dynamics of Civic Action

Paper by *Washington Katema* on the opportunities and challenges of legal advocacy (15 min)

Paper by *Simon Kabanda* on the Oasis Forum (15 min)

- *Kees Biekart*, ISS (8 min)

- *Edwin Abuya*, University of the Witwatersrand and University of Nairobi (8 min)

11.30 Discussion with Participants

12.00 Introduction of the Working Groups

12.15 Working Groups

Group A: Threats to Civic Action

Group B: Opportunities for Civic-State Interactions

Group C: Roles of External Actors

13.00 Lunch Break

14.00 Return to Working Groups

15.00 Report Back from the Working Groups

15.45 Discussion

16.30 Tea / Coffee Break

Public Evening Programme

17.30 Reflections on the Papers and Working Groups (Facilitator)

18.00 Keynote Speakers *Yasmin Sooka*, Foundation for Human Rights

Sharukh Alam, The Patna Collective, India (8 min)

18.30 Public Discussion / Debate

19.30 Drinks and Snacks

Note: Certain speakers may be subject to change.

4. Conference Paper Abstracts / Summaries

Paper by Jeff Handmaker

Civic-State Interactions and the Potential for Structural Change

Between June and July 1952, around ten thousand South Africans participated in numerous demonstrations around the country to mark the 300-year anniversary since the Dutch trader Jan van Riebeeck established a colony in the Cape of Good Hope. The demonstrators were protesting against the apartheid government's 'pass laws', which required black South Africans to live and work in inferior areas of the country and under oppressive conditions, solely on the basis of their race. Marking the beginning of a decades-long 'Campaign of Defiance Against Unjust Laws' (defiance campaign) by the African National Congress, the demonstrations were aimed at advocating the accountability of the South African government to all the people of South Africa. By exercising their civic agency to defy unjust laws, the demonstrators insisted, to South Africa and to the world, that the government be held accountable to national and universal human rights norms that the white minority regime recognised for white South Africans, but not for the black majority.

Accordingly, the defiance campaign was directed not only at the government and people of South Africa. It was also addressed to other countries and the United Nations, which had passed the Universal Declaration of Human Rights four years earlier (South Africa had abstained from voting). However unrealistic the prospects were at the time, advocating for accountability through the defiance campaign raised consciousness, or at least hope, in South Africa and around the world, that apartheid could eventually be defeated. The campaign provided considerable moral backing to various grassroots civic groups and eventually liberal civic organisations, many of which used the legal system to advocate for accountability, making legal-political claims against the government's unjust policies. The experiences of the anti-apartheid movement against South Africa provide a powerful illustration of how national and trans-national civic actors can, in general, mobilise and influence government and inter-governmental institutions to hold states accountable for their human rights obligations and in particular their obligations to promote, protect and fulfil human rights.

In Pretoria, in June and July 1996, several hundred refugees gathered on the lawns in front of the historic Union Buildings, where the office of the President was located, to demand social assistance. After having begun their protest in front of the regional offices of the United Nations High Commissioner for Refugees (UNHCR), the refugees had decided to direct their protest against the government of South Africa as well. The demonstrators were advocating for the accountability of both the United Nations and the government of South Africa towards meeting their demands for better treatment. The protest generated attention from the local and national media, but the South African government had not yet responded to the refugees' demands for better treatment. Civic organisations, and the South African public in general, had responded mostly with surprise rather than solidarity.

The demonstration had taken place at a key historical moment. South Africa had recently acceded to the policies of the United Nations and African Refugee Conventions, but had not yet developed a permanent policy on refugees. Some assistance was being provided through NGOs in regional offices, but this was far from adequate. Rather than being offered the opportunity for dialogue, the protestors were told that their presence on government property was illegal, and that they would be forcibly evicted if they did not move their makeshift camps. The UNHCR refused to intervene.

The protest in July 1996 created a greater consciousness in South Africa regarding the plight of refugees, and precipitated other forms of civic organisation. Following the protest, South African NGOs began to engage more with the government and the UNHCR on their responsibilities towards refugees. Legal advice projects were set up to inform asylum seekers about their rights, particularly in terms of the asylum determination procedure that had recently been established to evaluate whether they fulfilled the conditions for legal status as refugees. Training programmes were also established to inform police officers, NGOs, church groups, lawyers, judges and others on refugee matters. From committees formed within the tent camp in Ga'Rankuwa, refugee leaders went on to form organisations that became the basis of the Co-ordinating Body of Refugee Communities (CBRC), a refugee-led NGO advocating for accountability of the South African government and public to respect the rights of refugees. Two months after the demonstration, various civic actors formed what became the National Consortium on Refugee Affairs (NCRA), a national platform of South African NGOs and organisations representing refugee communities that would jointly advocate the accountability of the government to promote, protect and fulfil refugees' rights.

This paper discusses the dynamics of civic-state interactions aimed at the state or government's obligations to promote, protect and fulfil human rights. Efforts to advocate for accountability on refugee rights in South Africa can be compared in at least two important respects to civic advocacy efforts on other themes – and indeed countries – and in different social and political contexts. Firstly, this paper's primary study of refugee rights advocacy suggests that civic efforts to hold government accountable are both structurally conditioned and actively informed by specific historical events. Secondly, civic advocacy on refugee rights reveals the potential of legal and other forms of civic advocacy to hold states accountable through co-operative or confrontational interactions within the framework of both national and international institutions.

In summary, through the lens of refugee rights advocacy in South Africa in the early years of its post-1994 period of democracy, this paper explores the circumstances under which civic-state interactions can lead to structural change, and what these interactions can teach us about the potential of civic society to realise rights in general.

Paper by Marcelle Dawson

Resistance and Repression: Policing Protest in Post-Apartheid South Africa

This paper addresses the policing of protest from the viewpoint of both demonstrators and the police. In order to understand how the relationship between police and demonstrators has come to play itself out in a South African context, it is necessary to take a step back and examine the content of the actual demonstrations. Empirically, this paper examines two themes, namely the nature of popular protest in democratic South Africa and

experiences of the control of dissent. To address these issues, the paper provides a brief discussion on the struggles faced by an array of communities, concentrating on the issues of service delivery and participation. The discussion then considers protest action, paying particular attention to the Regulation of Gatherings Act (No. 205 of 1993), the techniques used by the police to squash dissent and the experiences of repression from the viewpoint of local activists and the police. To contextualise these themes, the paper begins with an account of post-apartheid restructuring as far as local government and the South African Police Service are concerned. The purpose of this part of the discussion is to question the nature and extent of democratic practices within these two state bodies. The paper then addresses the issue of the repression of resistance as discussed in the literature, but also as experienced by community activists in contemporary South Africa. In bringing the discussion to a close, the paper returns to the discussion on democracy, reflecting on oft-repeated claims by community activists that democracy does not exist in South Africa. The limitations of representative democracy are highlighted and the possibilities of what a participatory democracy would entail are examined.

The empirical material cited in this paper is derived largely from original field research conducted between August and October 2009 with community activists in Gauteng, Limpopo, the Western Cape and the Eastern Cape. Earlier data collected in Johannesburg between April 2006 and March 2007 have also been incorporated where necessary to substantiate certain claims. Some of the data from the earlier study in fact informed some of the questions that were posed in the current study. Observations of community meetings have also helped to frame the argument. The data gathering process relied largely on qualitative techniques such as in-depth interviews and focus groups, which allowed a certain amount of flexibility for interviewers to probe responses more thoroughly and seek clarification on issues that were not adequately explained. Moreover, this method allowed respondents to digress and raise issues that were important to them and their struggles, and which may not have been apparent to the interviewers at the outset of the project. In the current investigation, one focus group and 8 in-depth interviews were carried out in the Eastern Cape in Vincent, East London, Scenery Park, King William's Town, Mdantsane, Ginsberg and Amalinda. In Gauteng, one focus group and 13 in-depth interviews were conducted in Diepsloot, Kensington, Khutsong and Soweto. In the Western Cape, one focus group and six in-depth interviews were done in Athlone, Khayelitsha, Gugulethu, Kuilsrivier, Hout Bay and Mowbray. Finally, six focus groups and five in-depth interviews took place in Makopane in Limpopo in the Villages of Sekhuruwe, Chokoe, Ga Pila, Armoede, Ga Chaba and Skimming. Thus, a total of 32 in-depth interviews and nine focus groups were conducted with community activists in this investigation. The voices of the police are admittedly less salient, but they shed light on the policing of protest from the viewpoint of those who control dissent, rather than hearing only from the demonstrators.

Paper by Zaheera Jinnah

Migrant Mobilisation: Structure and Strategies in claiming rights in South Africa and Nairobi

This paper documents individual and collective mobilisation for migrants' rights in South Africa and Nairobi and contains 6 sections. After a short introduction, the second part reviews the literature on migrant mobilisation. Access to resources, social networks and political opportunities all play a key role in migrant mobilisation. In South Africa, there appears to be benefits in not mobilising, which include not being deported, and not having

reciprocal responsibilities which come with rights. Though South Africa has an active civil society sector, migrant issues do not occupy a visible part of the national agenda and there is key gap in national level advocacy -oriented organisations. The third part presents the findings of individual mobilisation amongst migrants in South Africa. Migrants are generally not mobilising for rights citing lack of documentation, discrimination and language barriers as key obstacles to claiming rights. Migrants also have minimal interaction with state institutions, NGO's and migrant led organisations. The fourth part discusses collective mobilisation in South Africa. Most organisations falls into four categories; international agencies and non-governmental organisations (NGO's), national South African led NGO's, smaller migrant-led NGO's and CBO's and faith based organisations (FBO's), with differing levels of resources, target groups and mandates. Almost all organisations do not have a clear mobilisation strategy or target citing limited funding for migrant related work, language problems, lack of resources and insufficient platforms for mobilising as key reasons for not mobilising. Collaboration in the migrant sector is limited; a lack of trust between the stakeholders and an unclear role of the state and international agencies has created a fragile and fragmented sector. The fifth part presents selected findings of individual and collective mobilisation from Nairobi. Similar to the South African study, most migrants have minimal trust and reliance on institutions and organisations. Collectively, most organisations have a different understanding of mobilisation and have limited resources to mobilise. Most of the organisations work is limited to the refugee camps, hindering the integration of migrants' rights within a broader discourse on development and human rights.

Paper by Jackie Dugard

Choice from No Choice - Rights for the Left?: State, Law and the Struggle Against Prepayment Water Meters in South Africa

In South Africa everyone will say that life is not fair for the poor. Even the rich will say ... this when they are just finding more and more excuses to give more of the country's money to themselves to build all these very expensive things ... so they can feel themselves to be 'world class'. Meanwhile our children, who, like the children in Haiti and Kenya and Zimbabwe are ... burning in shack fires and dying from diarrhoea around the corner. One of the truths that people want to hide from is that in this country where everything is done in the name of the suffering of the poor, life is good for the masters of the poor but it is very unfair for the servants of the poor ... But for the dawn of justice for all to come we must accept the truth that in our country, a country where ... the law gives everyone the right to gather and to speak, in reality the poor have to make their choices from no choice. Business and politics ... are all united in their demand for our silence ... [yet] everyday we are maturing in our struggle. We were always many but every day we are more. The red river that carried me will carry us all on and on through the shooting and the lies and the unfairness and all the choices that we will have to make without choice. Excerpt from 'When Choices Can No Longer Be Choices' by S'bu Zikode, president of Abahlali baseMjodolo.

In 1996 the South African post-apartheid legal order was consolidated with the enactment of the 'final' Constitution. Among the rights guaranteed in the Constitution is the right of access to sufficient water (section 27(1)(b) of the Constitution). The insertion of socio-economic rights, including the right to water, alongside other more traditional civil and political rights underscored the understanding that apartheid was as much a system of

socio-economic subjugation as of civil and political tyranny. Part of this recognition was an acknowledgment of the need to redistribute water resources and services more equitably. To this end there is a progressive legislative framework for water services that includes a national Free Basic Water (FBW) policy aimed at ensuring a lifeline amount of water per property per month, as well as a range of laws advancing a rights-based approach. However, notwithstanding such recognition and intention, when it comes to implementation, contemporary water service delivery is fraught with problems of non-participation, non-connection, disconnection and restriction. One of the main reasons for the disjuncture between frameworks and reality is the ascendancy of a neoliberal thrust towards cost-recovery in terms of which national government has devolved responsibility for water services to municipalities, and steadily decreased its financial and technical support for such services. As a result, municipalities are under considerable fiscal pressure to maximise profits from water services, entailing a preoccupation with recovering service-related costs from all areas, including poor communities. At the same time, there is no national regulation to enforce basic water standards or to ensure the protection and fulfilment of water-related rights, which adds to the perverse incentives for municipalities to view water more as a commodity than a public service.

Thus, in 2001, the City of Johannesburg formulated a project to limit water consumption in Soweto by means of the mass installation of prepayment water meters (PPMs). Called Operation GcinAmanzi (meaning: conserve water, in isiZulu), the project was premised on the mass rollout of PPMs across Soweto, starting with a pilot in one of the poorest suburbs - Phiri. Unlike the conventional meters available throughout Johannesburg's richer suburbs, which provide water on credit with numerous procedural protections against disconnection, PPMs automatically disconnect once the (largely inadequate) FBW supply is exhausted unless additional water credit is loaded. As such, PPMs fundamentally compromise low-income households' rights of access to water and equality (because PPMs are only installed in poor areas), contradicting the promises of the post-apartheid state and undermining the hopes of the residents of Phiri to become full participants in the socio-economic order. The contrast between the right to water in the Constitution and the limitation of that access by means of a PPM could hardly be starker, especially in the context of the hedonistic water consumption in Johannesburg's swimming-pooled (predominantly white) richer suburbs. For the residents of Phiri, this apparent betrayal was too much and, as the first trenches were being dug for the installation of the PPM infrastructure, in August 2003, they embarked on a resistance campaign against PPMs. From the outset, their resistance was supported by the Anti-Privatisation Forum (APF), a socialist social movement.

In Phiri, the struggle first took the form of direct protest rather than 'legal mobilisation', defined by Frances Zemans as the point at which 'a desire or want is translated into a demand as an assertion of one's rights' (Zemans, 1983: 700). This was not surprising, given the influence of the APF and the political left's historical antagonism to the law and rights as legitimising privilege. However, as detailed below, such resistance was only successful in delaying the installation of PPMs. But, at the lowest moment, when it looked like community resistance had failed, the APF took a strategic decision to turn to rights-based litigation, despite its ideological aversion to rights and the law. Nevertheless, from the outset, not much hope was vested in the litigation process, which was viewed as a last resort. Yet, following victory in the first stage of the legal battle – the Johannesburg High Court, which declared PPMs unlawful and unconstitutional on 30 April 2008 – there has been a remarkable demonstration of support for the law from the APF and other traditional

sceptics. This is despite the fact that (pending the outcome of the appeals process), the order against PPMs is suspended, suggesting that there might be more value to even contingent legal mobilisation than de facto outcomes alone. As Michael McCann concluded in his seminal study of the 1980s wage equity campaign in the United States of America, 'litigation provided movement activists an important resource for advancing their cause' (McCann, 1994: 4). I suggest the same is true for the Phiri campaign against PPMs, where the uptake of rights-based litigation has empowered water activists in ways that I suspect will continue to reverberate and shape struggles for water in Phiri and beyond.

In this vein, in the same year that the City of Johannesburg formulated its plan to install PPMs in Phiri, Daria Roithmayr wrote an article entitled 'Left Over Rights' responding to Duncan Kennedy's articulation of a 'post-rights' position. Roithmayr's article advances the argument (in line with Critical Race Theory, itself an offshoot of Critical Legal Studies) that rights can be pragmatically useful 'for particular communities of colour at particular moments in history' (Roithmayr, 2001: 113). In this paper I develop Roithmayr's thesis, arguing that rights can be useful to the left, regardless of the ultimate outcome of litigation per se. Advocating a pragmatic approach to rights, I suggest that in contemporary South Africa, with its extreme socio-economic and racial inequalities, while in the normal course law indeed serves the interest of elites, rights-based legal mobilisation can have a predominantly positive impact on social movements representing disempowered groups, including the poor. I conclude, as Roithmayr did, that, if strategically used, right-based legal mobilisation may in certain circumstances offer the left an additional tactic in a broader political struggle. In some instances the additional tactic might be a last resort, but still a useful one. Indeed, in Phiri, rights provided what S'bu Zikode has referred to as 'choice from no choice'. Nevertheless, even where litigation emerges as a tactic of desperation rather than hope, 'since rights carry with them the connotations of entitlement, a declaration of rights tends to politicise needs by changing the way people think about their discontents', legitimating claims, and thereby contributing to political mobilisation and, ultimately, to political change (Scheingold, 1974: 95, 131, 132, 147).

This paper documents and analyses the struggle against PPMs in Phiri, focusing in particular on the uptake and utility of rights-based legal mobilisation by the APF as an ordinarily rights-adverse social movement, manifesting in the Mazibuko water rights case. At the time of writing, the Mazibuko appeal had just been heard in the Constitutional Court. The judgment was handed down on 8 October 2009, during the final editing phase. In a shock decision, which overturned the findings of two previous courts, the Constitutional Court ruled against the applicants, finding PPMs to be lawful. However, notwithstanding the final judgment, the Phiri water campaign provides an interesting case study of an impoverished community's struggle against neoliberal policies, which has involved, but has never been dominated by, the uptake of litigation based on a human rights framework.

Paper by Frank S Jenkins

The Budget Process and Strategic Civic Interventions

The paper is premised on the assumption that the budget reveals the true priorities of the Government and reflects the choices and planning in respect of revenue and expenditure. One cannot influence priorities without participating in the budget process. The focus of the paper is on public participation in the budget process before Parliament and the

provincial legislatures. It analyses relevant procedures of legislatures, the right to participate in these, and the opportunities for strategic civic interventions to enhance state accountability to protect, promote and respect refugee rights and reduce poverty in South Africa.

The consideration of both the national and provincial annual budgets by Parliament and the provincial legislatures, respectively, are central to the processes of these legislatures. Both the legislative and the oversight functions of Parliament and provincial legislatures, provided for in the Constitution, are relevant when they are engaged in the budget process.

The constitutional right to participate in the processes of legislatures is framed as an obligation on the respective House to facilitate public involvement in its legislative and other processes and those of its committees. The right to participate in the legislative processes has been considered by a number of courts, which expect a legislature acting reasonably to provide meaningful opportunities for public participation; and to take measures to ensure that people have the ability or capacity to take advantage of the opportunities provided.

Earlier this year Parliament resolved through the adoption of its Oversight and Accountability Model that public participation is critical for the success of its oversight function. Parliament further drafted, considered and passed the Money Bills Amendment Procedure and Related Matters Bill, which was enacted and promulgated on 16 April 2009.

The Money Bills Amendment Procedure and Related Matters Act provides the procedure to amend the framework underpinning the budget, as well as the budget itself. The Act is a constitutional requirement for Parliament to amend the budget. Prior to the Act Parliament could only approve or reject the budget.

The Act, read with the Public Finance Management Act, maps out the budget process in Parliament. This process begins with an annual assessment of the performance of government departments and the consideration of the medium-term budget policy statement (MTBPS). These oversight perspectives form the basis of Parliament's consideration of the fiscal framework, Division of Revenue Bill, Appropriation Bill and revenue Bills, which together implement the budget. By setting out the procedure in legislation the Act helps to "demystify" the budget process. Furthermore, the Act creates dedicated opportunities for public participation, specifically in the consideration of the Division of Revenue Bill, Appropriation Bill, and revenue Bills.

A recent study tracking 10 years of public submission made to the National Assembly's finance committee indicates a significant number of submissions made vis-à-vis the legislative processes of the budget process, despite the absence of Parliament's amendment powers during this time. An analysis of the sources of these submissions indicates that the majority come from industrial bodies, professional / sector associations and the private sector. The study concludes that opportunities for public participation in the processes of the finance committee were above average compared to other committees of Parliament. However, the use of these opportunities by non-governmental organisations and community based organisations, amongst others, were "often sporadic and outnumbered." The study suggests that "civil society should actively use the available

channels of participation that private interests consistently use.” Participation in the MTBPS process was particularly limited.

Strengthening efforts to enhance state accountability to protect, promote and respect refugee rights and reduce poverty in South Africa begin with participation in the prioritisation of policy reflected in the budget process. Participation creates respect between all stakeholders – community and government – and provides government with information to enable it to produce the best possible legislation. These fruits of participation are also referred to as “ownership” and “credibility” of economic policy. Bringing grassroots perspectives of marginalised communities to the attention of legislators addresses the qualitative aspect of their disposition as well as empowering legislators to transform the situation.

As indicated above, participation of civil society in the parliamentary phase of the budget process is weak. This requires change. The opportunities created by the Money Bills Amendment Procedure and Related Matters Act should be explored and used. The use of these opportunities requires capacity. In this regard it might be necessary to create dedicated funding models to ensure that the necessary capacity to ask the right questions in respect of allocation of public resources is institutionalised in civil society. However, linking funding to the level of participation in the budget process – in other words: whether all the opportunities were explored – would not be enough. Evaluating the impact of participation must measure the impact on grassroots communities. Therefore the relationship between civil society and marginalised communities must facilitate direct communication of life experiences to legislators. If this is not the case, it is difficult to understand how participation has the potential to address the qualitative aspect of marginalisation. Lastly, legislatures must embody responsiveness – one of the founding values of the Constitution. Meaningful participation demands this. In the same manner that one cannot expect marginalised communities to feel empowered if they are not provided direct access to legislators, so it would make little sense to anyone, including well-capacitated civil society organisations, to participate in legislative and other processes if legislatures do not respond to submissions.

The paper discusses a rights-based model for making submissions during the budget process to enhance state accountability to protect, promote and respect the rights of asylum seekers and refugees and poverty alleviation in South Africa. It is suggested that grassroots experiences are conveyed to legislators with the aim to influence the annual assessment of government departments. The crisp issue in these submissions is whether the measures taken – in other words the policy or programme and its implementation – to give effect to the rights in the Bill of Rights or to implement legislation are reasonable.

The legislative phase of the budget process would require some form of budget analysis. In this respect the key is to identify the programmes and sub-programmes within the budget vote which are relevant for the specific subject matter of the submission, which might also necessitate an analyses of the provincial departments’ budgets. Once the relevant programme or sub-programme is identified, the question whether the budget allocation is appropriate must be considered within the parameters of “available resources” and “progressive realisation”. Assuming the policy underpinning the programme or sub-programme is reasonable, an appropriate budget allocation should ensure effective and efficient implementation. Furthermore, the budget allocation should show a progression over the medium-term in addition to accommodating the rate of inflation. The submission

may make recommendations to appropriate certain funds conditionally or specifically for a purpose, keeping in mind the principles of fiscal discipline, which the Money Bills Amendment Procedure and Related Matters Act prescribes.

It concludes that tracking strategic interventions in the budget process in Parliament and provincial legislatures provide a model to measure the level of participation of civil society organisations as well as the responsiveness of government.

Paper by Simon Kabanda

The Oasis Forum and the Citizens Forum: A study of social movements in Zambia

Multi-party democracy has not yet brought stable and mature politics and governance in Zambia. Almost two decades after its introduction, it is questionable whose interests Zambian politics really serve. The country's citizens have largely remained spectators in the development process of their country, with little opportunities to be engaged in the decisions that rule their lives.

Civic organisations and individual citizens have made efforts to enhance the political involvement of ordinary people. In this research two such initiatives are being analysed: the Oasis Forum, anchored in the campaign against the unconstitutional third term bid by the country's president in 2001, and the Citizens Forum, born in 2004 out of a realisation that so many citizens were not participating in running the affairs of their country.

The research aims to find answers to the following questions:

1. Why were the Oasis Forum and the Citizens Forum formed?

This question is discussing the genesis of the two movements. It is looking at the issues that led to their formation, and why they were burning issues at that time. It is also bringing out the seriousness and impact of those issues on the governance of the country, in relation to the multi-party democracy that the country embraced in 1991.

2. What personalities and institutions formed the two movements?

This question is identifying people and institutions that were instrumental to the formation of the two movements. It is looking at the position and status of those people in the country at that time. It is also bringing out some of the issues that those institutions and individuals had addressed in the past in order to provide credence to the relevance of the two movements.

3. What was unique about the Citizens Forum/Oasis Forum then? In the case of the Oasis Forum, what unique feature did each constituent member possess?

This question is exploring what new aspects of political involvement the two organisations brought on the scene. It is looking at the gaps that other civil society organisations were leaving, which the CF/Oasis Forum came to fill-up. It is also discussing the strengths and advantages of the constituent members of the Oasis Forum/CF.

4. What strategies did the two organisations employ to ensure success in their campaigns? What did the CF learn from the Oasis Forum?

These questions are looking at how the two organisations have been carrying out their activities. It is bringing out the various strategies employed by the CF/Oasis Forum which have been facilitating successful campaigns. It is also discussing some success stories of the CF and the Oasis Forum.

5. How much support have the two organisations been getting from external actors/cooperating partners?

This question looks at the role of the cooperating partners in supporting the mobilisation of the masses for a just cause. It explores how much execution of activities has depended on external funding, and whether external support has been a determining factor of their success stories of the organisations. The question also brings out to what extent the members of these organisations funded their activities.

6. How much support has been coming from institutions of governance, such as the National Assembly/District Councils, if any?

This question explores the role of parliament/councils in supporting or responding positively to the campaigns of the Oasis Forum/Citizens Forum. It also explores how individual MPs and/or Councillors have rendered support to the activities of the two organisations. It looks at what value such support has added to the campaigns.

Paper by Washington Katema

The Politics of Claiming Rights: the Case of Zimbabwe's Democratic Transition 2009

This research paper proposal seeks to interrogate the role of the civic society organisations as critical enablers in spearheading human rights and democratic reforms in the context of the fragile democratic transition in Zimbabwe.

Over the past decade, Zimbabwe has been a closed society characterized by political repression and economic regression. The land grabs of 2000, electoral violence of 2002, 2005 and 2008, Operation Murambatsvina (clear the filth) of 2005, which culminated in the demolition of homes and forced evictions of more than 700 000 families are concrete cases of human rights crisis in Zimbabwe. Civic organisations who have spoken out have been persecuted by the government of Zimbabwe.

Despite these challenges, civic organisations have been playing a leading role in promoting human rights and democratic governance in Zimbabwe, albeit with mixed results. With the signing of the Inter-Party Political Agreement (hereafter IPA) between political parties in Zimbabwe with parliamentary representation and the formation of the all-inclusive transitional Government on 15 September 2008, new possibilities have emerged. These developments provide a window of opportunity for civic organisations to strengthen their efforts in promoting human rights and democratic reforms in the hitherto authoritarian political system.

The work contained in the study aims to strengthen the civic society organisations and concomitantly review the alternative politics of claiming rights under authoritarianism and transition to democracy and address these challenges to mitigate the prevalent culture of impunity in Zimbabwe. Accordingly, it explores answers to the following questions:

- 1) How do civic organisations play a role in enhancing the protection and promotion of rights, both through co-operation and confrontation, with specific attention on the Zimbabwe's transition?
- 2) How do civic organisation fulfil a role in enhancing the protection and promotion of rights, both through co-operation and confrontation, using legal mechanisms at national and regional levels, in ending impunity in Zimbabwe?
- 3) What is the support base of the civic organisations that are promoting and protecting human rights in Zimbabwe where authoritarian rule has prevailed for so long? Who is involved, how and what efforts do the organisations undertake to gain confidence among citizens? What can be said about the level of success in that regard?
- 4) Where do experiences in Zimbabwe relate in promoting global human rights protection efforts?
- 5) Do these experiences confirm some universal lessons or do they reflect the need for treating each case entirely separately?